

1 **LYNELLE GAE**
207 Pittsburg Avenue
2 Bisbee, AZ 85603
3 520 432-3912
Plaintiff, In Pro Per

4
5 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
6 **IN AND FOR THE COUNTY OF COCHISE**

7 **LYNELLE GAE,**

8 Plaintiff,

9 vs.

10 **YOLANDA PEREZ MOOTS,**

11 Defendant.

)
) Case No. CV201800640
)

) **PLAINTIFF'S MOTION FOR**
) **SUMMARY JUDGMENT AND**
) **STATEMENT OF FACTS**

)
) (Hon. Karl Elledge)
)

12
13 Comes now the Plaintiff, LYNELLE GAE, and pursuant to Rule 56(a) Arizona Revised
14 Statutes Annotated Rules of Civil Procedure for the Superior Courts of Arizona, moves the
15 Court to enter Summary Judgment in favor of the Plaintiff, on the grounds and for the reason
16 that there is no genuine issue of material fact and Plaintiff is entitled to the entry of judgment
17 as a matter of law. This motion is supported by a Statement of Facts submitted herewith.
18

19 **INTRODUCTION**

20
21 Plaintiff filed this civil complaint for intentional tort on November 5, 2018. Defendant
22 continues to alter and damage the boundary fence between their properties by attaching objects
23 to, leaning objects against, and wedging objects underneath the wire fence. Plaintiff seeks
24 injunctive relief and Abatement by Plaintiff.

25 **STATEMENT OF FACTS**

26 As outlined in Defendant's answer to Plaintiff's complaint paragraphs 1 – 11:

27 Numbers 1 – 4. Defendant affirms venue, parties and letter Plaintiff sent to Defendant.
28

1 Number 5. Defendant denies that Plaintiff requested removal of objects in letter because
2 the objects place a heavier burden on the wire panels and supporting poles than they were
designed to bear; however, the letter states otherwise (see Exhibit A).

3 Number 6. Defendant affirms that she agreed to remove objects damaging the fence (see
4 Exhibit B).

5 Number 7. Defendant denies that Plaintiff purchased materials and repaired the fence;
6 however, Plaintiff has a receipt for materials and photographs of intact, repaired fence (see
Exhibit C and Exhibit D).

7 Number 8. Defendant denies that she and her ex-husband altered and began damaging the
8 fence; however, Plaintiff has photographs of objects leaning against, wedged under it and
attached to fence (see Exhibit E).

9 Number 9. Defendant denies that her ex-husband's threats and violent actions occurred;
10 however, Plaintiff called 911 and filed a complaint with the Bisbee Police Department (see
11 Exhibit F).

12 Number 10. Defendant denies that her actions are interfering with Plaintiff's use and
13 enjoyment of her land in a manner that is substantial and unreasonable; however, as
14 described in the above paragraphs and shown in the above Exhibits it is apparent this is
false.

15 Number 11. Defendant denies her actions are intentional; however, Defendant's agreement
16 and cooperation in March 2018, followed by her resumption of damaging actions 7 months
later show she is acting with knowledge and purpose.

17 The following facts are also material to this case:
18

19 Plaintiff hired Bisbee Land Surveying after this civil suit was filed to determine Plaintiff's
20 property lines (see Exhibit G). The plat map and parcel detail show that the boundary fence
21 is completely within Plaintiff's property line (see Exhibit H and Exhibit I). Exhibit J shows
the survey markers at the front and back of Plaintiff's property line in relation to the
boundary fence.

22 ARGUMENT

23 Defendant is intentionally interfering with the use and enjoyment of Plaintiff's property by
24 altering and damaging the wire fence separating Plaintiff and Defendants properties and
25 preventing Plaintiff from preserving the fence. Although the fence is completely within
26 Plaintiff's property line, its existence creates entirely enclosed properties for both Plaintiff and
27 Defendant and therefore is used by, and benefits, both parties.
28

1 In the absence of Arizona state statutes, Cochise County ordinances, and City of Bisbee
2 ordinances addressing boundary fence law, mutual ownership and maintenance responsibilities
3 are supported by a "law of the land" argument. Thirty-nine states have statutes providing for
4 joint expense and maintenance of division fences. In addition, private owners of adjoining
5 properties are presumed to benefit equally from boundary fences. Under this presumption,
6 adjoining property owners are equally responsible for constructing, maintaining and replacing
7 boundary fences. The shared nature of a boundary fence implies that no one neighbor can
8 remove or modify an existing fence without the other neighbor's permission.
9

10 CONCLUSION

11 As demonstrated in the above statement of facts, there exists no disputed genuine issue of
12 material fact between the parties requiring a trial to resolve, and the moving party is entitled to
13 judgment as a matter of law.
14

15 I declare under penalty of perjury under the laws of the State of Arizona that the foregoing
16 is true and correct.
17

18 DATED this 11th day of January, 2018.

19
20 By: 

21 LYNELLE GAE
22 Plaintiff

23 Copies of the foregoing
24 Delivered/mailed this 11 day of January, 2019 to:

25 Hon. Karl Elledge
26 Cochise Co. Superior Court Division IV
27 100 Colonia de Salud
28 Sierra Vista, AZ 85635

Yolanda Perez Moots
205 Pittsburg Avenue
Bisbee, AZ 85603
Defendant

EXHIBIT A

February 26, 2018

Ms. Yolanda Perez Moots
205 Pittsburg Avenue
Bisbee, AZ 85603

COPY

Dear Ms. Moots,

As you know, part of the wire fence separating our yards is broken and needs repair. I am writing to notify you of my intent to repair the fence and restore it to its original form and structure to match the rest of the wire fence separating our properties (see enclosed photographs of the original existing fence). The original wire fencing extends approximately 79 feet as measured from the front property line toward the back property line to the broken part. The part that needs repair and restoration extends from that point approximately 20 feet farther to the back of the property line.

I propose the installation of new "vintage style looped wire woven fencing" (see enclosed fact sheets) over the existing old wire fencing as measured from the back property line forward to approximately 20 feet, which will cover and mend the broken parts, and attaching it to the four supporting posts in that 20 foot measured area.

In order to make these repairs and restore the fence to its original form and structure the following must be removed from the old wire fencing:

- 1) any and all objects fastened to or attached to the existing wire fence including but not limited to: pieces of metal, pieces of wood, mesh or screen, household items or furniture, and any other wire panels or structures,
- 2) any and all objects leaning against the existing wire fence including but not limited to: pieces of metal, pieces of wood, mesh or screen, household items or furniture, bricks, concrete blocks and rocks,
- 3) any and all items wedged against or under the existing wire fence including but not limited to: pieces of metal, pieces of wood, household items or furniture, bricks, concrete blocks and rocks.

The fence is damaged by objects leaned on it, attached to it, and wedged underneath it. These objects place a heavier burden on the wire panels and supporting posts than they were designed to bear.

When a boundary fence needs repair, both property owners must share the cost; however, I am willing to pay for the materials and the installation as outlined in the above paragraphs. Please respond in writing if you have alternative suggestions. I will wait 14 days before proceeding.

Thank you for your time and consideration.

Sincerely,

Lynelle Gae

Decorative Wire Loop Fencing - 20 ft Roll x 50" tall - Single Loop



[Click to Enlarge](#)

Availability:	In Stock
Item #	20x50gs
Reg. Price:	\$169.95
Quantity	<input type="text" value="1"/>

Description

Related

More Images

Shipping

Customer Ratings

Decorative Wire Loop Fencing - 20 ft Roll x 50" tall - Single Loop

Single Loop Decorative Wire Fencing makes the perimeter of your yard retro-looking like old double loop wire fencing. In 2015, double loop (11-gauge) wire fencing product lines were discontinued. We're bringing in a premium single loop (8-gauge) wire fencing with the same classic look, yet 25 percent thicker.

Check out our other listings for different sizes and gates. This listing is for a 20' length x 50" tall and we will ship it in an unfinished galvanized metal surface.

A Rustic Garden

Questions? Call Today at 217.773.3778

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[Wrought Iron Gates](#)

[Relle Iron Fencing Gates - American Iron Fence](#)

[Lexington Double Wrought Iron Driveway Gates](#)

[Fence & Outdoor Gate Hardware - Wrought Iron Fencing](#)

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[Galvanized Ornamental Looped Top Wire Fence - Vintage Style](#)

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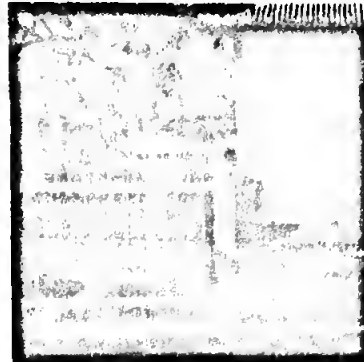
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[Home](#) > [Wire Fencing & Gates](#) > [Galvanized Ornamental Looped Top Wire Fence - Vintage Style](#) > [Vintage Style Looped Wire Woven Fence - 20' long x 50" tall](#)

Vintage Style Looped Wire Woven Fence - 20' long x 50" tall



Item # 20ftrollx4ftwirefence
Regular price: \$209.95
Qty 1



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[+ Enlarge Image](#)



[Description](#) [Shipping](#) [Video](#) [Related](#)

We offer our 60" tall woven wire vintage style metal fence in 20' increments. This looped top fencing looks like the perimeter yard fence that was popular in the middle of the 1900's. What a great purchase to have this economical functional easy to install fencing to keep your children and animals safe.

The surface will be unfinished galvanized metal now being made in the stronger 8 gauge wire. See the last picture to show you our improved fencing. Available for May delivery.

You May Also Like



Galvanized Ornamental Vintage Style Looped Wire Fence - 3' t - 100' Roll
\$400.95



Galvanized Vintage Ornamental Looped Fence - 4' t - 100' roll
\$440.95



Vintage Style Wire Looped Fence - 120' Roll x 50" tall
\$1,100.95



Featured Item



Cross And Curl Victorian Metal Arbor 50" w x 90" t
\$359.95

Recently Viewed Items

American Iron Fence

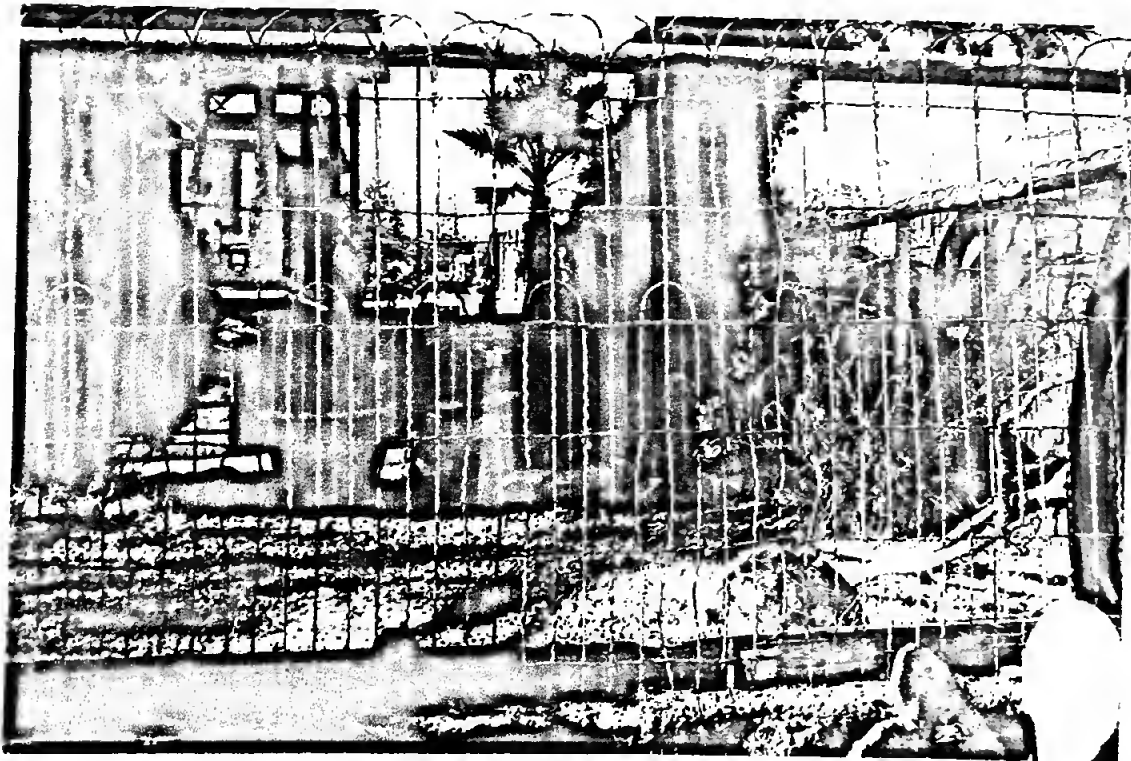
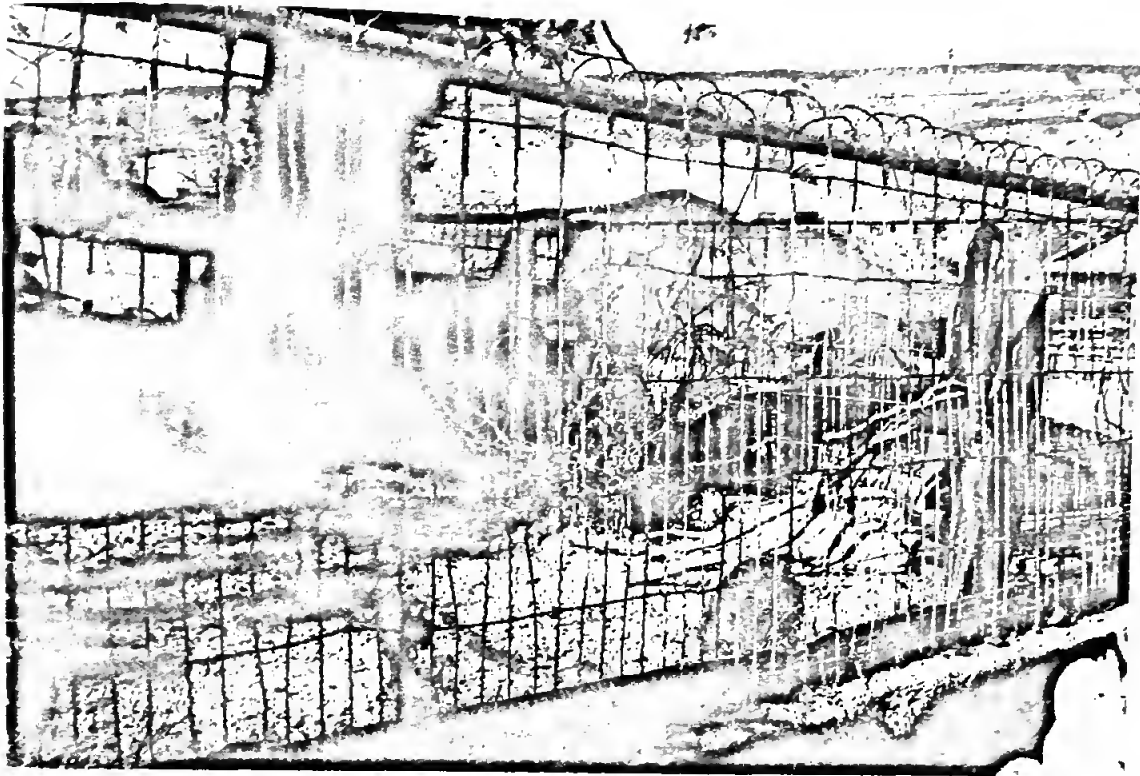


EXHIBIT B

March 8th, 2018

In response to your proposal dated February 26, 2018, I am in an agreement to allowing you to repair the original wire fencing that extends 79 Feet from the front property line toward the back property line to the broken part which extends 20 feet to the back of the property line.

Please provide me with 14 days notice prior to installation of the fencing so I can remove any and all objects.

I have enclosed the fencing fact sheet that I would like to have installed.

Thank you,
Yolanda P. Moots

COPY

Questions? Call Today at 217.773.3778

Search Site...

Home > Wire Fencing & Gates > Galvanized Ornamental Looped Top Wire Fence - Vintage Style > Vintage Style Looped Wire Woven Fence - 20' long x 50" tall

3' Tall Wrought Iron Fencing & Gates

4' Tall Wrought Iron Fencing & Gates

5' Tall Wrought Iron Fencing and Gates

6' Tall Wrought Iron Fencing & Gates

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Wrought Iron Garden Border Fencing - 12 Styles

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Double Loop Wire Gates Posts Latches & Brackets

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Vintage Style Looped Wire Woven Fence - 20' long x 50" tall



Item # 20ftrollx4ftwirefence

Regular price: \$209.95

Qty 1



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Gallery

Description Shipping Video Related

We offer our 50" tall woven wire vintage style metal fence in 20' increments. This looped top fencing looks like the perimeter yard fence that was popular in the middle of the 1900's. What a great purchase to have this economical functional easy to install fencing to keep your children and animals safe.

The surface will be unfinished galvanized metal now being made in the stronger 8 gauge wire. See the last picture to show you our improved fencing. Available for May delivery.

You May Also Like

Preferable - 4pm.



Galvanized Ornamental Vintage Style Looped Wire Fence - 3' t - 100' Roll
\$699.95

[Details](#)



Galvanized Vintage Ornamental Looped Fence - 4' t - 100' roll
\$949.95

[Details](#)



Vintage Style Wire Looped Fence - 120' Roll x 50" tall
\$1,109.95

[Details](#)

Featured Item



Cross And Curl Victorian Metal Arbor 50" w x 90" t
\$359.95

Recently Viewed Items

American Iron Fence

EXHIBIT C

Sales Receipt

A Rustic Garden

American Iron Fence
854 975N Ave
Mount Sterling, IL 62353
866.514.2733



Ship To: Lynelle Gae
207 PITTSBURG AVE
BISBEE, AZ 85603-1237 US
lyngae@earthlink.net
520-432-3912

Order # 2232
Date 3/13/2018
User lyngae@earthlink.net
Buyer Lynelle Gae
Ship Date

Prod SKU	Item	Description	Price	Qty	Ext. Price
20x50gs	20x50gs	20' x 4 ft tall Galvanized Loop Fence	\$209.95	1	\$209.95
					Sub Total: \$209.95
					Shipping: \$0.00
					Total: \$209.95

We Appreciate Your Business. Thank You For Your Order!



"Visit us online at www.arusticgarden.com"

EXHIBIT D

COPY



Bisbee Police Department

Report for Incident B18-4097

Nature: CIVIL COMPLAINT
Location: BSPD2

Address: 207 Pittsburg Ave
Bisbee AZ 85603

Offense Codes: C101

Received By: RBowie

How Received: 9

Agency: BSPD

Responding Officers: KMahoney BSPD, BSwan

Responsible Officer: KMahoney BSPD

Disposition: CLO 11/03/18

When Reported: 14:10:42 10/27/18

Occurred Between: 14:09:51 10/27/18 and 14:09:51 10/27/18

Assigned To:
Status:

Detail:
Status Date: **/**/**

Date Assigned: **/**/**
Due Date: **/**/**

Complainant: 256542

Last: GAE

First: LYNELLE

Mid:

Race: W

Sex: F

City: Bisbee, AZ 85603

Offense Codes

Reported: C101 Civil complaint

Observed:

Additional Offense: C101 Civil complaint

Circumstances

NMOR Call Slip- non MOR

Responding Officers:

Unit :

KMahoney BSPD

P45

BSwan

S22

Responsible Officer: KMahoney BSPD

Agency: BSPD

Received By: RBowie

Last Radio Log: **:**:** **/**/**

How Received: 9 911 Line

Clearance: BRP Bisbee Report To Follow

When Reported: 14:10:42 10/27/18

Disposition: CLO Date: 11/03/18

Judicial Status:

Occurred between: 14:09:51 10/27/18

Misc Entry:

and: 14:09:51 10/27/18

Modus Operandi:

Description :

Method :

Day of Week

Preferred Day of Week

Saturday

Involvements

Date	Type	Description	Relationship
11/03/18	Name	Moots, Yolanda P	Person Mentioned
11/03/18	Name	Moots, Richard	Person Mentioned
10/27/18	Name	GAE, LYNELLE	Complainant
10/27/18	Cad Call	14:10:42 10/27/18 CIVIL COMPLAINT	Initiating Call

Narrative

BISBEE POLICE DEPARTMENT Narrative Report

NARRATION:

On 10-27-18 at approximately 1410 hours, officers were dispatched to 207 Pittsburg Ave for a civil complaint.

Upon arrival, I spoke to Yolanda Moots and Richard Moots, who stated that they were working on the fence to cover a hole and their neighbor Lynelle Gae keeps pulling the repair apart. Mr. Moots stated that this is an ongoing problem and they take apart the fence to allow the cats to come through the fence.

I spoke to Lynelle Gae, who stated that every time they are saying they area repairing the fence, Mr. and Ms. Moots keep damaging the fence and her property. Ms. Gae stated that the wire fence is supposed to be a shared property line and they both have rights to the fence. Mr. Gae stated that the tin fence was one that she had installed six inches off the property line and Mr. Moots keeps damaging the tin.

Both parties were informed that the situation was a civil matter at this time and referred to the JPl Court. Nothing further to report.

Date, Time, Reporting Officer: Officer Mahoney, #2080, Patrol
Date, Time, Reviewed By:

Name Involvements:**Person121603****Mentioned :****Last:** Moots**First:** Richard**Mid:****Race:****Sex:****City:** Bisbee, AZ 85603**Person107768****Mentioned :****Last:** Moots**First:** Yolanda**Mid:** P**Race:** L**Sex:** F**City:** Bisbee, AZ 85603**Complainant :** 256542**Last:** GAE**First:** LYNELLE**Mid:****Race:** W**Sex:** F**City:** Bisbee, AZ 85603

EXHIBIT E

EXHIBIT F

EXHIBIT G

BISBEE

LAND SURVEYING

BISBEESURVEYING.COM • (520) 366-6597
221 Van Dyke Street, Bisbee, Arizona

INVOICE

INVOICE #	DATE
1019	12/7/2018

BILL TO
Lynelle Gae 207 Pittsburg Avenue Bisbee, Arizona 85603

CUSTOMER ID	TERMS
2018-019	Due Upon Receipt

DESCRIPTION	QTY	UNIT PRICE	AMOUNT
Record of Survey	-	-	\$2,300.00
	-	-	

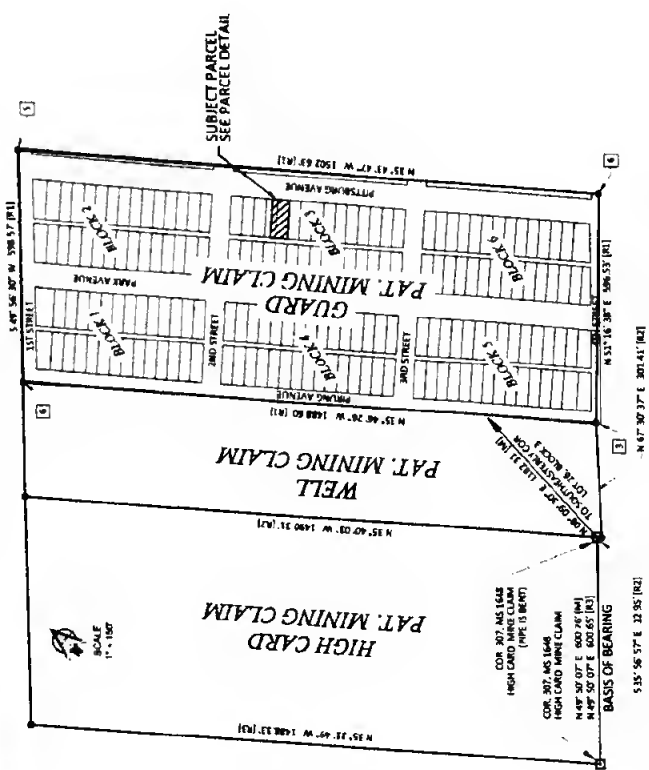
Thank you for your business!

SUBTOTAL	\$2,300.00
PAID (30\$)	
TAX	
TOTAL DUE	\$

If you have any questions about this invoice, please contact us.

EXHIBIT H

BAKERVILLE TOWNSITE DETAIL [R1 - R3, R5]

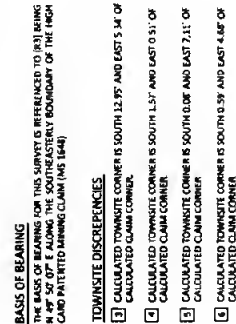


SURVEYORS' NOTES

The following are comments about the levels of observation as experienced by the surveyors (all names and initials are the best experience of propriety) (LOUIS CONSIDERING THE FOLLOWING:

1. THE EXTERIOR DIMENSIONS OF THE BARREILLE TOWNSHIP [REDACTED] DID NOT AGREE WITH THE DIMENSIONS OF THE CUMULATED INTERESTED PARTIES.
2. ALL THE CORNERS OF THE CUMULATED INTERESTED PARTIES [REDACTED] WERE LOST.
3. IT WAS UNABLE TO LOCATE ANY EXISTING MONUMENTS FOR THE BARREILLE TOWNSHIP [REDACTED].

THE SURVEYORS HAVE BEEN ADVISED THAT THE CORNERS OF THE SUBJECT PARCELS ARE AS FOLLOWS:



RECORDATION

THE BASIS OF BEARING FOR THIS SURVEY IS REFERENCED TO (R3) BEINGS
IN 49° 50' 07" E ALONG THE SOUTHEASTERLY BOUNDARY OF THE HIGH
CAMP PATENTED MINING CLAIM (MS 1648)

TOWNSITE DISCREPANCIES

[3] CALCULATED TOWNSITE CORNER IS SOUTH 12.95' AND EAST 5.34' OF CALCULATED CLAIM CORNER.

4 CALCULATED TOWNSHIP CORNER IS SOUTH 1.51° AND EAST 0.51° OF CALCULATED QUAIL CORNER.

5 CALCULATED TOWNSHIP CORNER IS SOUTH 0.00° AND EAST 7.11' OF CALCULATED CLAIM CORNER

6 CALCULATED TOWNSHIP CORNER IS SOUTH 0.59' AND EAST 4.65' OF CALCULATED CLAIM CORNER

SUPPORTING DOCUMENTS

[R1] PATENTED MINING CLAIM - GUARDED (1980)
RECORDS OF FREEPORT MACMORAN COPPER QUEEN BRANCH, BISMARCK, ARIZONA

[illegible]

THE SURFACE, TOGETHER WITH A DEPTH OF 4000 FEET IMMEDIATELY BELOW THE SURFACE, TOGETHER WITH THE SOUTHEASTLY ONE-HALF OF SECTION 34, TOWNSHIP 26N, RANGE 17E, BLOCK 3, BARNVILLE TOWNSHIP, ACCORDING TO BOOK 15, RECORDS OF COCHISE COUNTY, ARIZONA.

SURVEYORS CERTIFICATION

I, GLEN M. SUMMERS, HEREBY CERTIFY THAT I AM A REGISTERED LAND SURVEYOR IN THE STATE OF ARIZONA, THAT THIS MAP CORRECTLY REPRESENTS A SURVEY MADE BY ME OR UNDER MY DIRECT SUPERVISION AND THAT IT ACCURATELY DENOTES THAT THE MONUMENTS SHOWN HEREON ACTUALLY EXIST AND THAT THEIR POSITIONS ARE SUFFICIENT FOR THE SURVEY TO BE RETRACTED.



BAKERVILLE YOUNGSTE (1904)
BOOK 00 OF MAPS, PAGE 33, COCHISE COUNTY RECORDS AND
BOOK 01 OF MAPS, PAGE 15, COCHISE COUNTY RECORDS
SURVEYOR LINCOLN

RECORD OF SURVEY
LOT 26 AND A PORTION OF
LOT 27 OF THE BAKERVILLE
TOWNSITE, COCHISE
COUNTY, ARIZONA.
T 23 S - R 24 E - SEC. 15 & 22

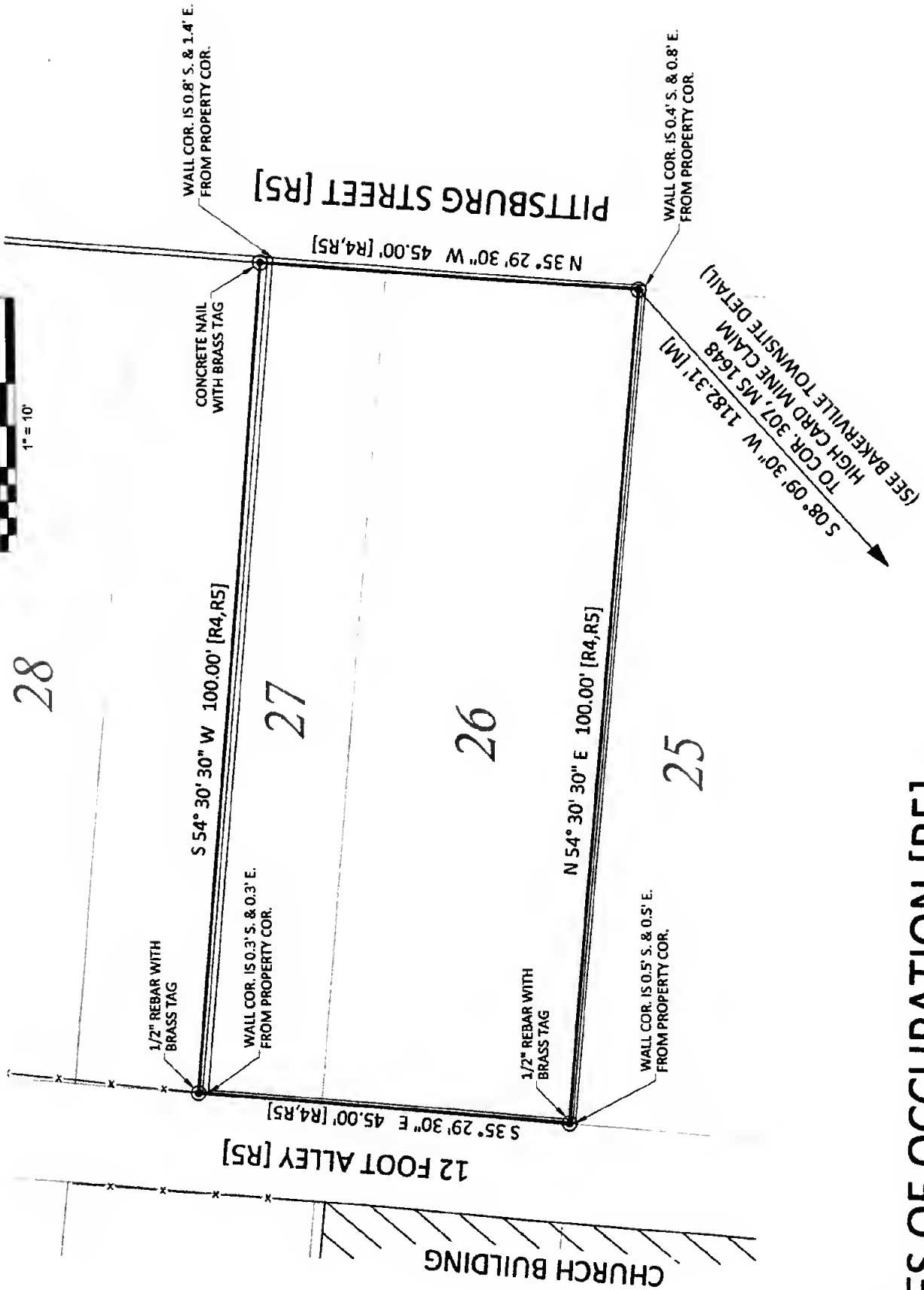
DESIGNED BY	QMS	DATE	14/08/2018
DRAWN BY	QMS	DATE	14/08/2018
APPROVED BY	QMS	DATE	14/08/2018

BISBEE
LAND SURVEYING
221 VAN DYKE STREET • BISBEE • ARIZONA • 85603
WWW.BISBEE-SURVEYING.COM • (520) 366-1211

EXHIBIT I

EXHIBIT J

PARCEL DETAIL [R4, R5]



LINES OF OCCUPATION [R5]

SCALE: 1" = 60'

SURVEYORS NOTES